



Comptroller General
of the United States

Washington, D.C. 20548

Ms. Williams

Decision

Matter of: Dec-Tam Corporation--Request for Reconsideration

File: B-236784.2

Date: May 25, 1990

Maury E. Lederman, Esq., Roche, Carens & DeGiacomo, for the protester.

John B. Miller, Esq., Gadsby & Hannah, for American Environmental Services, Inc., an interested party.

Brian Henretty, Esq., Office of the Chief Counsel, U.S. Army Corps of Engineers, for the agency.

Paula A. Williams, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration that is based on arguments previously considered and rejected is denied since the requester has not furnished a legal or factual basis for reversing the earlier decision.

DECISION

Dec-Tam Corporation requests that we reconsider our decision, Dec-Tam Corp., B-236784, Jan. 9, 1990, 90-1 CPD ¶ 37, in which we denied Dec-Tam's protest against the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACA45-89-B-0117, issued by the U.S. Army Corps of Engineers for the cleanup of hazardous wastes. We deny the request for reconsideration.

The IFB required bidders to specify the unit price and extended price for each item listed on the bid schedule. The IFB also cautioned bidders that failure to price each item and subitem would be cause for rejection of the bid. The Corps rejected Dec-Tam's bid because the firm omitted a unit price for basic bid item 3.d. and for an error in the extended bid price for item 3.c. We concluded that the rejection of Dec-Tam's bid as nonresponsive to item 3.d. was proper. In doing so, we specifically considered and rejected Dec-Tam's argument that this deficiency was not fatal to its bid because the bid for the unpriced item

allegedly could have been inferred from Dec-Tam's consistent pattern of pricing on the identical item elsewhere in its bid.

In its request for reconsideration, Dec-Tam argues that we should reverse our earlier decision because it is based on a "misunderstanding of certain critical facts" and on "unsupported" contentions by the agency. Specifically, Dec-Tam reiterates its earlier allegation that it intended to price base bid item 3.d. and option item 0-1.c. identically and its intention to do so could have been inferred because the soil sampling described in base item 3.d. and option subitem 0-1.c. are to be performed in the exact same places under the exact same conditions. In addition, the protester states that we improperly considered the costs of sample collecting and shipping as factors which would cause price variations between these two items; and finally, that the Corps failed to prove that the number of samples in item 0-1.c., which was twice that in item 3.d., had any "impact" on the price of the two line items.

Upon receipt of Dec-Tam's reconsideration request, we solicited the views of the Corps. In response, the Corps filed a supplemental report in which it again detailed the specific requirements of item 3.d. and 0-1.c. Contrary to Dec-Tam's request for reconsideration, our earlier decision addressed these substantive issues in the context of the Corps' rejection of its bid. For example, on page 3 of our decision we quoted from the requirements of the IFB which described the work to be performed under item 3.d. as consisting of the collection of 20 soil samples to be taken from identified areas at the site with 10 of these samples to be taken from surface spill areas at depths of only 2 feet. On the other hand, item 0-1.c. requires up to 40 samples to be taken exclusively from unidentified oil-contaminated underground storage tank areas at subsurface locations, that is, at depths greater than 2 feet. We concluded that Dec-Tam could not be permitted to correct the omitted price for item 3.d. since the work required by this item is not identical to that required by item 0-1.c. In the absence of any evidence to the contrary in Dec-Tam's request for reconsideration, we remain of the view that the protester has not shown that our earlier decision contains errors of fact or law that would warrant its reversal. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1989).

Similarly, Dec-Tam's allegation that we improperly considered the costs of sample collecting and shipping as an element of the unit price for each item such that the unit prices would not be identical does not provide a basis for reversing our earlier decision. According to Dec-Tam, we

improperly considered this cost even though the Corps did not "rely" on this fact. The protester does not refute our finding, as articulated more fully by the agency in its supplemental report, that a bidder could utilize economies of scale by collecting and shipping all of the test samples under item 3.d. at the same time whereas it is unclear that a bidder could use the economies of scale for collecting and shipping test samples under item 0-1.c. because of the uncertainties associated with the quantity and timing of these test samples. Dec-Tam has not cited any regulation or statute which would preclude our consideration of any relevant "fact," apparent from the record, even though neither party to the dispute raised it.

The request for reconsideration is denied.



for James F. Hinchman
General Counsel